

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JUSTIN GARDNER,

Petitioner,

vs.

STATE OF NEBRASKA,

Respondent.

**4:19CV3005**

**ORDER**

This matter is before the court on the Notice of Appeal (filing 50) filed by Petitioner on June 2, 2022, and a memorandum from the Clerk of the Court requesting a ruling as to Petitioner's authorization to proceed in forma pauperis ("IFP") on appeal (filing 51). Petitioner seeks to appeal the court's April 12, 2022 Memorandum and Order (filing 44) denying him leave to proceed IFP on his previous appeal, which is presently pending in the Eighth Circuit Court of Appeals, and the mandate (filing 39) entered by the Court of Appeals on April 4, 2022.

Petitioner cannot appeal this court's denial of leave to proceed IFP on appeal. Rather, Petitioner should file a motion to proceed IFP in the Court of Appeals, which the Court of Appeals specifically directed him to do. (Filings 47 & 49.) *See* Fed. R. App. P. 24(a)(5) ("A party may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice [of the district court's denial]."). Petitioner's purported appeal of the Court of Appeals' mandate is also improper. Additionally, Petitioner has already pursued multiple appeals in this case and his third appeal is presently pending. Accordingly, I certify that this appeal is frivolous and not taken in good faith, and Petitioner may not proceed in forma pauperis on appeal. *See* Fed. R. App. P. 24(a)(3) and 28 U.S.C. § 1915(a)(3).

IT IS THEREFORE ORDERED that: Petitioner may not proceed on appeal in forma pauperis. This matter is closed, and Petitioner should refrain from filing any further frivolous appeals.

Dated this 8th day of June, 2022.

BY THE COURT:



Richard G. Kopf  
Senior United States District Judge